

**Title IX Compliance Considerations**

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**ECB&S** | Engler Callaway  
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Why do we need Title IX training?

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*"The final regulations advance Title IX's promise of ensuring that no person experiences sex discrimination, including sex-based harassment or sexual violence, in federally funded education...The final regulations also require schools to take prompt and effective action when notified of conduct that reasonably may constitute sex discrimination in their education programs or activities."*

**August 1, 2024**

- Update to Department of Education's 2020 regulations implementing Title IX

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## Training Requirements

- All employees
- Investigators, decisionmakers, and other persons who are responsible for implementing the grievance procedures or have the authority to modify or terminate supportive measures
- Facilitators of informal resolution processes
- Title IX Coordinators and designees

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## All employees have obligations under Title IX



- “Eyes and ears”
- Title IX response applies any time the Cooperative/District has *knowledge of conduct that reasonably may constitute sex discrimination*
- Extends to conduct “occurring under the Cooperative’s/District’s education program or activity”

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When is conduct “under the Cooperative’s/District’s education program or activity”?

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Are electronic networks under your program/activity?



- Yes, if provided by the Cooperative/District
- Yes, if a personal device is used in the school environment

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What is sexual harassment?

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**Prior Definition, effective until 8/1/2024**

*Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so *severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault," "dating violence," "domestic violence," or "stalking"

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**Effective 8/1/2024**

Under Title IX, "sex-based harassment" is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex - including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity - when the conduct meets the following criteria:

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**Effective 8/1/2024**

(1) *Quid Pro Quo Harassment*. An employee or agent of the Cooperative/District explicitly or impliedly conditions the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

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**Effective 8/1/2024**

(2) *Hostile Environment Harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the Cooperative's/District's education program or activity (i.e., creates a hostile environment).

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**Effective 8/1/2024**

*(3) Specific Offenses.*

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

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Is this sexual harassment?

- A fourth-grade boy taunts a girl classmate on several occasions, calling her a stupid, f\*\*\* bitch
- Would it make a difference if the girl's parents shared with administration that their daughter cannot concentrate in class, is in constant fear of the boy's next verbal barrage and is consumed with thinking about how she will defend herself?

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Is this sexual harassment?

- A kindergartener in a district-run before school care program has made a game of touching older students' private areas

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**Is this sexual harassment?**

- A high school teacher agrees to provide academic support after school to a student who is struggling in class. Administrators learn that the teacher starts the sessions by giving the student a relaxing shoulder massage. The student resisted these massages at first, but the teacher told the student that unless the student was in an appropriately "relaxed" state, it was just a waste of the teacher's time to try and provide academic help.

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**Sexual Harassment in a Special Education Setting**

- A. has ADHD, emotional disturbance, a communication disorder, muscular dystrophy and arthritis
- IEP notes A. craves "any kind of positive attention" and that A. has difficulty reading social cues
- On a nature hike field trip, a group of boys, functioning at a higher cognitive level than A., tell A. to "flash" them and explain it's something girls like to do
- A. asks a teacher why girls like to "flash"
- On a subsequent field trip, the same group of boys talks A. into playing "strip poker" consisting of A. and the boys exposing body parts
- Bus driver notes change in group's behavior and unusual movements

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**What triggers the response procedures?**

**Knowledge/information about conduct that reasonably may constitute sex discrimination**

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Am I on notice of sexual harassment?

- Employee overhears a student mention that another student is absent because her boyfriend beat her up?

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Am I on notice of sexual harassment?

- Students are talking about "sexting" pictures circulating on social media of another student?

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Am I on notice of sexual harassment?

- Student tells bus driver he doesn't want to sit next to another student because she keeps hugging him?

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Am I on notice of sexual harassment?

- Student has cognitive disabilities as a result of a traumatic brain injury
- She complains that four boys are “bothering” her

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WHEN IN DOUBT, REPORT!



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Specific Reporting Requirements

- Confidential employees
- All other employees
- Victim

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**Title IX Coordinator**

- Coordinates Title IX compliance responsibilities
- Receives information from individuals about sex discrimination and sexual harassment allegations or conduct
- Responds to the person who is the target of conduct that reasonably may constitute sex discrimination

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**Title IX Coordinator**

- Title IX Coordinator **MUST** offer supportive measures
  - Individualized services
  - Designed to restore or preserve access to the education program or activity without unreasonably burdening the other party
  - Maintained confidentially
  - Available with or without filing a formal complaint

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**Title IX Coordinator**

- The Title IX Coordinator **MUST** explain the formal complaint process (and, if a complaint is filed, the Title IX Coordinator receives the complaint)
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will coordinate remedies and/or discipline
- Regardless of whether a complaint is initiated, the Title IX Coordinator must take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur

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**Title IX Coordinator**

- If a complainant or respondent is a student with a disability, the Title IX Coordinator must consult with one or more members of the IEP team or Section 504 team, as applicable
- Consultation is for the purpose of determining how to comply with IDEA and Section 504 throughout implementation of the grievance process

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Complaint Procedure

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**Investigator**

- Assumes “the burden of conducting an investigation that gathers sufficient evidence to determine whether sex discrimination occurred”
- Interviews parties and witnesses
- Reviews other relevant information

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**Investigator**

- Provides an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence
- Reviews the evidence and determines what evidence is relevant and what evidence is impermissible regardless of relevance
- Provides the parties with the opportunity to access the evidence and respond to the evidence

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**A Note on Impartiality**

- Investigator (and Decisionmaker) must be free of bias and conflict of interest
  - Do not assume one party is more credible
  - Do not prejudge witnesses or facts
  - Do not rely on stereotypes in place of objective facts
- Do not let personal relationships influence evaluation of facts (or step aside if that cannot be accomplished)
- May be appropriate to consider age and impact of trauma on parties/witnesses in evaluating evidence

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**Title IX Grievance Procedure, Board Policy 2:265**

- Consistency with Uniform Grievance Procedure (Board Policy 2:260):
  - Need to provide a standard of evidence (UGP provides preponderance of the evidence standard)
  - Need to allow for appeal

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**Title IX Grievance Procedure, Board Policy 2:265**

- “Reasonably prompt” timeframes
- Describes range of supportive measures available in connection with complaints of sex-based harassment
- Describes range of possible disciplinary sanctions and remedies that may be imposed if there is a determination that sex-based harassment occurred

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**Title IX Grievance Procedure, Board Policy 2:265**

- Requires a presumption that the respondent is “not responsible,” until the investigation process is completed and a determination is made
- Allows for unilateral dismissal of complaint in certain circumstances, including if conduct alleged would not constitute sex discrimination
- Allows complainant to withdraw formal complaint

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**Title IX Grievance Procedure, Board Policy 2:265**

- An informal resolution process may be offered
  - Not available if the complaint includes allegations that an employee engaged in sex-based harassment against a student
  - Parties must agree to participate and can withdraw anytime

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**Title IX Grievance Procedure, Board Policy 2:265**

Must provide the parties with written notice of the allegations, with sufficient detail to allow for response:

- Grievance procedures
- Identities of the parties involved
- Conduct allegedly constituting sex discrimination
- Date and location of the incident
- Statement that retaliation is prohibited
- Statement of rights regarding evidence

Notice must be amended if additional allegations come to light in investigation.

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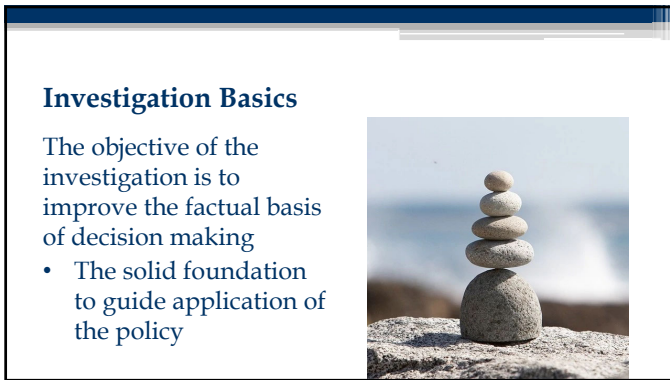
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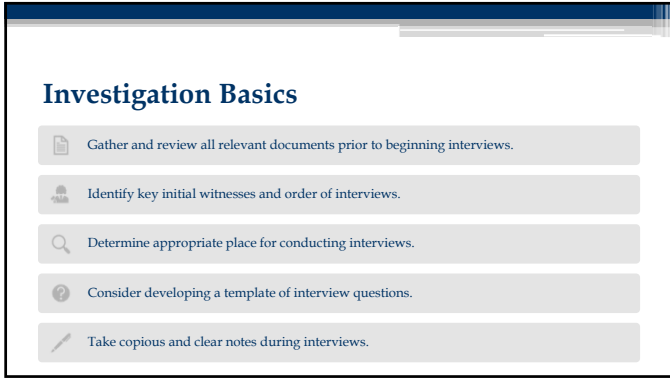
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### Investigation Basics

- Determine the extent of personal knowledge, as opposed to hearsay.
- Have the witness identify any other likely witnesses and any relevant documents.
- Ascertain the basis for the concern of any witness who "doesn't want to get involved."

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### Investigation Basics

Ask open-ended questions

Who? What? When? Where? How Often?

Follow up until you are certain you have no more questions

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### General Rules For Conducting Interviews

- Explain process
- Full, truthful cooperation is expected
- Limits on confidentiality
- Opportunity to provide interviewee's side
- Elicit information based on first-hand knowledge; the interviewee should identify when answers are based upon rumor or received from a third party
- Remind the interviewee of anti-retaliation protections
- If the interviewee recalls any other pertinent information, the interviewee should report the information to you directly

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## Considerations in Evaluating Relevance

- Does the information relate to the allegations?
- Does the witness have personal knowledge of the facts?
- Does the version of event corroborate others?
- Is there contemporaneous documentation that is consistent with the statement?
- Does the witness have a motivation not to be truthful?
- Did the witness independently recall details or only after consulting documentation?



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## Investigation Basics



Do not reach a conclusion until all witnesses have been fully interviewed and all pertinent documents reviewed.



If you are declining to interview a witness, document why.

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## A Note on Due Process



- Both parties must be given an equal opportunity to access and respond to the evidence obtained in the investigation
  - Consider at what stage that is appropriate
  - Do you need to test a party's recall or the truth of a statement against information you received from another source? Or can you directly confront the party with the evidence?

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### Investigation Basics

- Take complete and clear notes.
- Collect copies of all relevant documents.
- Inform individuals who have relevant documents to retain the documents; consider sending a "preservation" memorandum.

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### Investigation Basics

- DON'T doodle or make notes on extraneous matters.
- DON'T summarize interviews with conclusory language in your notes; DO write down details given by the interviewees to summarize in the investigation report.
- DON'T memorialize conclusions about credibility and/or findings or make recommendations in your notes; DO memorialize conduct or behavior from which you would draw such conclusions or make such recommendations in the investigation report.



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Investigation Report

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**Investigation Report**

**General Outline Of Report:**

- 1. Summarize the Complaint:**
  - Date received and applicable procedures/timelines.
  - Allegations in complaint.
- 2. Identify the Investigation Components:**
  - Documents or other evidence (*e.g.*, recordings, pictures) collected and reviewed.
  - Interviews conducted (*e.g.*, staff, students, other involved individuals).

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**Investigation Report**

- 3. Evidence and Determinations:**
  - Summarize relevant information and evidentiary determinations.
  - If not relying on evidence, consider providing an explanation of what evidence has been excluded and why.
  - Consider specifically addressing any response from the parties in the final report.

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The Decision

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### The Decision



- Decisionmaker must apply the selected evidentiary standard
- Decisionmaker must have an opportunity to question parties and witnesses if credibility is at issue
- Decisionmaker must evaluate relevant/permissible evidence for persuasiveness

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### The Decision

The decisionmaker must notify the parties in writing of:

- The determination as to whether sex discrimination occurred
- The rationale for the determination
- The applicable appeal procedures
- The permissible bases for appeal

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### The Decision



Provide to the parties simultaneously



Involve Title IX Coordinator to implement any remedies

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**A Note on Appeals**

- Complaint dismissals may be appealed
- Determinations may be appealed “as in other comparable proceedings”

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**Retaliation**

- Absolutely prohibited
  - Whether individual reported
  - Whether individual assisted in the process
  - Whether individual refused to participate in the process (except that employees can be required to provide information)
- Grievance procedures apply
- Separate violation of policy

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QUESTIONS?



**ECB&S** Engler Callaway  
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